

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**PAULA E. GRAY,
Claimant Below, Petitioner,**

**vs.) No. 17-0091 (BOR Appeal No. 2051455)
(Claim No. 2016012834)**

**ECOLAB (MARTINSBURG),
Employer Below, Respondent**

FILED

November 22, 2017
EDYTHE NASH GAISER, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

MEMORANDUM DECISION

Paula Gray alleges she injured her left hand and wrist while putting bags on an automating machine on July 31, 2015. Her claim for worker's compensation benefits was denied by the claims administrator on February 24, 2016. We are asked to determine whether the denial of the claim was proper. After review, we find that the claim was properly denied as the left upper extremity injury was not work-related. We further find upon consideration of the standard of review, the briefs, and the record presented, that there is no substantial question of law and no prejudicial error requiring oral argument. A memorandum decision is appropriate under Rule 21 of the Rules of Appellate Procedure.

Ms. Gray, through her attorney Robert L. Stultz, argues that the reliable, probative, and substantial evidence of the record establishes the claim should be held compensable for a left wrist sprain/strain and left elbow sprain/strain. Ecolab (Martinsburg), through its attorney James S. Maloney, argues that the reliable, probative, and substantial evidence of record shows Ms. Gray did not sustain a compensable injury.

Ralph T. Salvagno, M.D., performed an independent medical evaluation and noted Ms. Gray felt nerve pain in her left wrist during July of 2015, but she did not recall any recent history of injury to her left arm. He diagnosed a sustained subluxation of the ulnar nerve on the right or at least an irritation of the ulnar nerve at the cubital canal. He was unable to draw a causal relationship between the mild ulnar neuropathy and the work injury.

J. Craig Henry, M.D., a neurologist, treated Ms. Gray and noted that EMG/NCV testing of the left upper extremity was unremarkable and diagnosed numbness. Gongqiao Zhang, a physician's assistant, listed the diagnoses of left wrist sprain/strain and left elbow sprain/strain in the Employee's and Physician's Report of Injury. He opined the symptoms were due to the injury.

Dr. Salvagno prepared a supplemental report after reviewing additional medical records and the first report of injury in which he opined that the July 31, 2015, event did not qualify as a new and distinct injury to the left wrist. The clinical symptoms of mild ulnar neuropathy of the left wrist and elbow were not related to the work incident. The claims administrator rejected the claim on February 24, 2016.

Martin Baechler, M.D., diagnosed bilateral ulnar abutment syndrome, right radial ulnar joint arthritis, and he wanted to rule out bilateral cubital tunnel syndrome. He recommended bilateral MRIs and neuro-diagnostic testing. The MRIs revealed ulnar abutment syndrome with central triangular fiber cartilage complex perforation bilaterally and distal radial ulnar joint arthrosis on the right. The neuro-diagnostic testing was normal. He recommended bilateral wrist arthroscopy and distal ulnar open water resection, which Ms. Gray underwent. Ms. Gray testified that she continued to experience pain and stiffness in the wrist after surgery, but she was working on range of motion and grip strength. She expected to make a full recovery and return to work full duty. She first started having numbness in her hands in May of 2014.

The Office of Judges affirmed the claims administrator's rejection of the claim on July 11, 2016. It found Ms. Gray had a history of idiopathic neuropathy in the lower extremities and boney abnormality of the wrist. While Ms. Gray alleged that she suffered a left wrist injury on July 31, 2015, when she was working on light duty, she also testified she had previous left wrist pain. Dr. Salvagno opined that the mild ulnar neuropathy of the left arm was not causally related to a July 31, 2015, work event. The Office of Judges relied on the opinion of Dr. Salvagno and determined that it was more likely than not that Ms. Gary did not suffer a fortuitous event on July 31, 2015, in the course of and as the result of her employment. The Board of Review adopted the findings of fact and conclusions of law of the Office of Judges and affirmed its Order on January 4, 2017.

We find that the evidentiary record shows that Ms. Gray had left wrist pain and numbness dating back to May of 2014. The record did not include an opinion of Dr. Baechler, who performed the surgery, regarding the causation of the left wrist condition. Dr. Salvagno opined the mild ulnar neuropathy was not work-related. The Office of Judges relied on the opinion of Dr. Salvagno. Its assessment of the evidence should not be disturbed on appeal.

For the foregoing reasons, we find that the decision of the Board of Review is not in clear violation of any constitutional or statutory provision, nor is it clearly the result of erroneous conclusions of law, nor is it based upon a material misstatement or mischaracterization of the evidentiary record. Therefore, the decision of the Board of Review is affirmed.

Affirmed.

ISSUED: November 22, 2017

CONCURRED IN BY:

Chief Justice Allen H. Loughry II

Justice Robin J. Davis

Justice Margaret L. Workman

Justice Menis E. Ketchum

Justice Elizabeth D. Walker